IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.634 OF 1988

The State of Maharashtra)
(Through the Special Land Acquisition)
Officer, Raigad, Alibag).).. Appellant

Versus

Mohanlal Motiji Porwal).. Respondent

Mr.K.K.Tated, Assistant Government Pleader, for the Appellant.

Mr.Kiran Jain for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 2ND DECEMBER 2004

ORAL JUDGMENT :

. The judgment and award dated 15th January 1987 passed by the District Judge, Raigad in Land Acquisition Reference No.357 of 1986 is challenged in the present First Appeal. The suit lands are situate at village Devlad, Khopoli. Two houses bearing Nos.287(C-1) and 288(C-18) are situate on these lands. The suit lands including the houses were acquired by the Municipality for road widening. On 27th October 1977, Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued for acquiring lands in Devlad village. On 26th March 1982,

the Special Land Acquisition Officer passed an Award in respect of the lands held by the Respondent. The Special Land Acquisition Officer awarded Rs.19,970/- as compensation at the rate of Rs.30/- per sq.mtr.. Aggrieved by this Award, the Claimant i.e. Respondent herein preferred a Reference under Section 18 of the Act. This Reference was decided on 15th January 1987. The District Judge came to the conclusion that the Award made by the Special Land Acquisition Officer was too low and it did not take into consideration the two houses which were on the suit lands. The District Judge, therefore, has awarded Rs.1,00,000/- for the two houses and Rs.56,680/- for the land at the rate of Rs.200/- per sq.mtr. The Court has also awarded additional amount at the rate of 12% under Section 23(1A) of the Act. This additional amount is Rs.72,451/-. The total amount awarded to the Respondent is Rs.2,37,455.80.

2. The main grievance of Mr.Tated, learned Assistant Government Pleader, in respect of the judgment and award of the District Judge is that the additional amount under Section 23(1A) of the Act could not have been granted in view of the fact that the Award had already been made on 26th March 1982 i.e. prior to the insertion of Section 23(1A) on the statute book. The other submission made by the learned Assistant Government Pleader is that the Reference has not been

preferred within 42 days after receiving the notice under Section 12(2) of the Act. According to him, the notice was received by the Respondent on 8th May 1982. He submits that the Reference had been preferred beyond the period of limitation of 42 days which is prescribed under the Act. Both these grounds have not been raised in the Memo of Appeal and the learned Assistant Government Pleader is seeking to raise them for the first time today before me.

3. Section 23(1A) has been inserted into the statute book on 30th April 1982. The Supreme Court in the case of *Kashiben Bhikabai and others* vs. *Special Land Acquisition Officer and another*, **(2002) 2 SCC 605**, has held that the additional compensation of 12% cannot be awarded to a claimant when the Award itself has been made prior to the enactment of Section 23(1A). The Apex Court has held thus (vide paragraph 17) :

> "17. Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in *Union of India* v. *Filip Tiago De Gama of Vedem Vasco De Gama*, **(1990) 1 SCC 277** which held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to 30-4-1982. If the Collector made the award before 30-4-1982 then the additional amount under Section 23(1-A)

cannot be awarded. The pendency of the acquisition proceedings on 30-4-1982 before the Collector was essential for attracting the benefit under Section 23(1-A) of the Act. It was held : (SCC pp. 286-87, para 21)

> "21. Entitlement of additional amount provided under Section 23(1-A) depends upon pendency of acquisition proceedings as on 30-4-1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants would not be entitled to the additional compensation provided under Section 23(1-A) of the Act."

There is no dispute that the award was made on 26th March 1982, prior to the Land Acquisition Act being amended by the enactment of Section 23(1A). Therefore, obviously the amount of Rs.72,451/- which is awarded by the District Court has been awarded contrary to law and the impugned judgment and award concerning that amount must be set aside. The amount of Rs.72,451/- will have

to be refunded to the Government by the Respondent.

4. As regards delay in preferring the Reference under Section 18, the entire submission is unsustainable. The notice under Section 12(2) intimating the Respondent of the award was received on 8th May 1982. The Reference has been filed on 13th June 1982. Therefore it has been preferred well within the period of limitation. It was probably for this reason that such a contention has not been raised by the State either in its Written Statement before the District Judge or before this Court in the Memo of Appeal.

5. The Respondent shall refund the amount of Rs.72,451/- together with interest at the rate of 6% from 14th December 1988 i.e. when the entire amount under the impugned judgment and award was paid to the Respondent. This amount shall be paid within twelve weeks from today.

6. Appeal allowed. No order as to costs.